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## FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 12-37; DA 12-202]

Comment Sought on Petition for Declaratory Ruling Interpreting the Definition of “Commercial Mobile Radio Services” as Applied to NEXTG Networks of California, Inc.’s Distributed Antenna Systems and Other “Small-Cell” Solutions

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Wireless Telecommunications Bureau seeks comment on NextG Networks of California, Inc.’s Petition for Declaratory Ruling, which asks the Commission to interpret § 20.3 of the Commission’s rules and to find that it is not a provider of “commercial mobile radio service” (CMRS).

**DATES:** Interested parties may file comments on or before April 2, 2012, and reply comments on or before May 2, 2012.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 12-37, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Federal Communications Commission's Electronic Comment Filing System (ECFS) Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions on submitting comments and additional information, see the SUPPLEMENTARY INFORMATION

**FOR FURTHER INFORMATION CONTACT:** Amy Brett, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, [Amy.Brett@fcc.gov](mailto:Amy.Brett@fcc.gov), (202) 418-2703.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, DA 12-202, released on February 16, 2012, which seeks comment on a Petition for Declaratory (Petition) filed December 21, 2011, by NextG Networks of California, Inc. (Petitioner), a subsidiary of NextG Networks, Inc. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all

data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### Summary of Public Notice

1. The Petitioner asks the Commission to interpret § 20.3 of the Commission's rules, 47 CFR 20.3, in response to a referral from the Superior Court of Arizona, County of Maricopa. In the state court litigation, Petitioner is challenging the City of Scottsdale, Arizona's authority to impose fees on Petitioner for use of public rights-of-way. Petitioner asks the Commission to find that it is not a provider of "commercial mobile radio service" (CMRS) as defined in § 20.3 of the Commission's rules. Such a finding could potentially exempt Petitioner from local fees under Arizona law.

2. The Commission has defined CMRS in § 20.3 of the rules as: "A mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent

of such a mobile service described in paragraph (a) of this §.” § 322(d)(1) of the Communications Act of 1934, as amended, similarly defines a “commercial mobile service” as “any mobile service (as defined in § 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.” 47 USC 332(d)(1).

3. Petitioner states that it provides telecommunications service via Distributed Antenna Systems (DAS) and other “small-cell solutions.” Petitioner states that in operating these systems, it transmits signals for its wireless carrier customers along fiber optic networks between equipment used by the carriers to receive and transmit radio signals and the carriers’ networks. Petitioner argues that, because it only transports received wireless signals over its own wired network, it does not provide “commercial mobile radio service” as defined under the Commission’s rules. Petitioner also states that it has received a certificate of convenience and necessity from the Arizona Public Utilities Commission to provide its services in the State of Arizona.

FEDERAL COMMUNICATIONS COMMISSION

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[FR Doc. 2012-4659 Filed 02/27/2012 at 8:45 am; Publication Date: 02/28/2012]